

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this "**Agreement**") is made as of the 24th day of May, 2012 ("**Effective Date**"), by and between Id Software LLC, on its own behalf and on behalf of its parent, ZeniMax Media Inc. (including its divisions and affiliates), both Delaware companies, with offices at 1500 N. Greenville Ave., 7th Floor, Richardson, TX 75081 (collectively, the "**Disclosing Party**"), and Palmer Luckey, an individual, residing or with offices at 6301 E Seaside Walk, Long Beach, CA 90803 (the "**Receiving Party**") (collectively, the "**Parties**").

RECITALS

WHEREAS, the Disclosing Party has or may provide certain highly confidential and proprietary information to the Receiving Party regarding Disclosing Party's proprietary computer entertainment software, including virtual reality (VR) testbed software and related assets, and for such other purposes as the Parties may agree in writing (each, a "**Proper Purpose**"); and

WHEREAS, the Parties understand that their relationship is one of trust and confidence and that, through such discussions and other exchanges of information, the Receiving Party will gain access to Proprietary Information (as defined below) of the Disclosing Party as defined below. The Receiving Party agrees that Receiving Party and each of Receiving Party's officers, directors, employees and counsel, if any, will be legally bound by the terms of this Agreement, and shall maintain the confidentiality of all such Proprietary Information in accordance with this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Disclosing Party and the Receiving Party hereby agree as follows:

1. **Proprietary Information.** "**Proprietary Information**" means all information and know-how, regardless of whether or not in writing, of a private, secret or confidential nature that relates to the business, technical or financial affairs of the Disclosing Party, its parent, subsidiaries, affiliates, licensors, customers, potential customers, suppliers or potential suppliers provided or disclosed to the Receiving Party or which becomes known to the Receiving Party, whether or not marked or otherwise designated as "confidential", "proprietary" or with any other legend indicating its proprietary nature. Proprietary Information includes, by way of illustration and not limitation, all forms and types of financial, business, scientific, technical, or engineering information, including patterns, plans, compilations, inventions and developments, products, formulas, designs, prototypes, methods, techniques, processes, procedures, computer programs and software (whether as source code or object code), documentation, technologies, plans, research, marketing, and reports, other technical information relating to the Disclosing Party's business, and any information not generally known to the public or within the industry or trade in which the Disclosing Party competes, whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Proprietary Information shall further include any such information, materials, tangible or intangible property of any third party with whom the Disclosing Party does or considers doing business and who may have disclosed or entrusted such information to the Receiving Party pursuant to or in furtherance of the Proper Purpose. Proprietary Information shall also include the fact that the Parties are or have been interested in or assessing the Proper Purpose and negotiating with each other regarding the Proper Purpose and the status of those discussions or negotiations and the terms of this Agreement or any other agreement reached by the Parties or proposed by either Party in connection with the Proper Purpose. Proprietary Information shall not include information that: (1) has become public knowledge through legal means without fault by the Receiving Party, (2) is already public knowledge prior to the Disclosing Party's disclosure of the same to the Receiving Party, (3) is rightly known to the Receiving Party free of any obligation of confidentiality prior to the Disclosing Party's disclosure of the same pursuant to this Agreement, or (4) is independently developed by the Receiving Party without reference to or use of the Proprietary Information.

2. Duties.

a. **Maintenance of Confidentiality.** With respect to the Disclosing Party's Proprietary Information, the Receiving Party undertakes and agrees that Receiving Party shall secure and keep such Proprietary Information strictly confidential and:

(i) Shall protect and safeguard the Proprietary Information against any unauthorized use, disclosure, report, transfer or publication with at least the same degree of care as Receiving Party uses for Receiving Party's own confidential or proprietary information, but in no event use less than reasonable care;

(ii) Restrict disclosure to those of its directors, officers, employees or attorneys who clearly have a need-to-know such Proprietary Information, and then only to the extent of such need-to-know, and only in furtherance of the Proper Purpose;

(iii) Use such Proprietary Information only for the Proper Purpose and not disclose such Proprietary Information other than as set forth above unless the Disclosing Party shall have expressly authorized such disclosure in advance in writing; and

(iv) Not use any Proprietary Information to compete or obtain any competitive or other advantage with respect to the Disclosing Party.

b. **Ownership.** All Proprietary Information, including but not limited to that which is contained in files, letters, memoranda, reports, records, data, sketches, drawings, notebooks, program listings, or other written, photographic, or other tangible, intangible, or other materials, or which shall come into the Receiving Party's custody or possession, is and at all times shall be the exclusive property of the Disclosing Party, and shall be used by the Receiving Party only for the Proper Purpose.

c. **No Rights or Licenses Granted.** The Receiving Party shall not acquire hereunder any right whatsoever to any Proprietary Information, including without limitation any right or license of any patent, trademark, copyright, trade secret, moral right or any other right now or later recognized by any law or regulation of any jurisdiction throughout the universe (collectively, "*Intellectual Property Rights*") as a result of or in connection with any disclosure hereunder. Accordingly, nothing in this Agreement is intended or shall be construed as a transfer, grant, license, release or waiver of any Intellectual Property Rights in any Proprietary Information.

d. **Return of Proprietary Information.** At the request of the Disclosing Party, the Receiving Party shall promptly return any and all Proprietary Information, and shall permanently delete and purge any and all Proprietary Information held in an electronic storage media, received from the Disclosing Party, together with any and all copies of such Proprietary Information in the possession, custody or control of the Receiving Party or any of its agents or employees, and in every case shall, within thirty (30) days of receiving such a request, certify in writing its compliance with the terms of this provision. After such delivery, the Receiving Party shall not retain any copies thereof.

e. **No Obligation.** Nothing in this Agreement shall be deemed to obligate either Party to disclose any Proprietary Information to the other, or to accept any Proprietary Information of the other.

f. **Remedy.** The Receiving Party acknowledges the insufficiency of money damages as a remedy for any breach of this Agreement by Receiving Party, and that any such breach would cause the Disclosing Party irreparable harm. Accordingly, the Receiving Party agrees that the Disclosing Party, in addition to any other remedies available at law, shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. The Receiving Party further agrees to waive the securing or posting of any bond in connection with such remedy. If litigation arises relating to this Agreement, and a court of competent jurisdiction determines that the Receiving Party, or any of its respective employees, has breached this Agreement, the Receiving Party shall be liable and shall pay to the Disclosing Party the reasonable legal fees incurred by the Disclosing Party in connection with such litigation, including any appeals therefrom.

3. Miscellaneous.

a. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

b. **No Waiver.** No delay or omission by the Disclosing Party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by the Disclosing Party on any occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

c. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Texas without giving effect to principles of conflicts of law. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof shall be finally settled by the Texas courts in Dallas County, Texas.

d. **No Relationship Created.** Nothing in this Agreement shall be construed as establishing or implying any partnership, agency or joint venture relationship between the Parties, or authorize a Party to commit or bind the other Party in any way whatsoever without obtaining the other Party's prior written consent.

e. **No Commitment.** Nothing contained in this Agreement shall be construed as implying any commitment or agreement by either Party to make any investment in the other Party or in any business of the other Party or to enter into any other business arrangements of any nature whatsoever with respect to the other Party.

f. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue in perpetuity, unless sooner terminated upon written notice by the Disclosing Party. The obligations of confidentiality hereunder with respect to all Proprietary Information shall survive any termination of this Agreement.

g. **Amendments in Writing.** No amendment or modification of any term of this Agreement shall be valid or binding on the Parties unless made in writing and executed on behalf of each Party by a duly authorized representative.

h. **No Warranty.** No disclosure of any Proprietary Information by the Disclosing Party shall constitute any representation or warranty by the Disclosing Party regarding the accuracy of the same or the non-infringement of any patent, trademark, copyright or any other intellectual property or proprietary right.

i. **No Publication.** The Receiving Party shall not disclose, publicize or advertise in any manner the discussions or negotiations contemplated by the Agreement without the prior written consent of the Disclosing Party, except as may be required by law.

j. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto concerning the subject matter hereof and supersedes any prior or contemporaneous agreements and understandings concerning the subject matter hereof.

k. **Counterparts.** This Agreement and any amendment hereto may be executed in counterparts, each of which when executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may be delivered by facsimile or otherwise electronically.

l. **Notices.** All notices, requests and consents under this Agreement shall be in writing and shall be deemed to have delivered (a) on the date personally delivered, (b) on the date sent by FedEx or similar courier service, signature on receipt required, or (c) when sent via facsimile and confirmed to the following address as applicable:

CONFIDENTIAL

If to Id Software:

1500 N. Greenville Ave., 7th Floor
Richardson, TX 75081
Tel: (972) 613 3589
Fax: (972) 686 9288
Attn: Todd Hollenshead, President
Email: toddh@idsoftware.com

with a copy to:

J. Griffin Leshar, EVP-Legal
ZeniMax Media Inc.
1370 Piccard Drive, Suite 120
Rockville, MD 20850
Tel: 301.948.2000 (x254)
Fax: 301.990.7025

If to Palmer Luckey:

6301 E Seaside Walk
Long Beach, CA 90803
Tel: 562.546.2259
Fax: _____
Email: palmertech@gmail.com

with a copy to:

805 Highlands Dr
Glenwood Springs CO 81601
Fax: _____
Attn: Nicole Edelmann

m. **Headings.** Headings used in this Agreement are for reference only and shall not affect the interpretation of this Agreement in any way.

n. **Export.** This Agreement is subject to, and each Party is responsible for complying with, any laws, regulations, orders, or other restrictions on the export or import of the Proprietary Information, and information about the same, which may be imposed from time to time. The Receiving Party agrees not to import, export or re-export any Proprietary Information of the Disclosing Party or information pertaining thereto to any country where restricted and/or controlled by law or regulation without first obtaining express authorization to do so from the Disclosing Party and all necessary licenses or approvals.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date and agree to be legally bound by all terms and conditions contained herein.

ID SOFTWARE LLC,
on its own behalf and on behalf of
ZENIMAX MEDIA INC. (including its divisions and
affiliates)

By:

Name: J. Griffin Leshar
Title: Secretary

Palmer Luckey